

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing by Ohio Edison Company,)	Case No. 16-481-EL-UNC
The Cleveland Electric Illuminating Company,)	
and The Toledo Edison Company)	
of a Grid Modernization Business Plan)	
)	
In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company)	Case No.17-2436-EL-UNC
Application for Approval of a Distribution Platform Modernization Plan)	
)	
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017)	Case No.18-1604-EL-UNC
)	
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change)	Case No.18-1656-EL-TA
)	

**INITIAL COMMENTS ON THE DAYMARK REPORT
BY
THE NORTHWEST OHIO AGGREGATION COALITION
AND ITS MEMBER COMMUNITIES**

The Northwest Aggregation Coalition and its member communities (together “NOAC”) respectfully submits these initial comments on the “Operational Benefits Assessment of FirstEnergy Ohio’s Grid Mod 1” prepared by Daymark Energy Advisors, Inc and dated November 14, 2022. This will be referred to as the Report or Daymark Report.

Comment 1: FirstEnergy's shortfalls and malfeasance as identified in the Report show that the report is incomplete in failing to adequately describe these and why they occurred. The review/audit should have been expanded and it must be expanded in scope. A fully independent forensic financial and operational accounting is required to protect customers.

The Daymark Report finds both significant acts and patterns of malfeasance by FirstEnergy in its spending of over \$650 million of customer money on Grid Mod 1. The Report "Summary" contains a long list of shortfalls not expected by a company proceeding in good faith. Among many, two examples:

- No Grid Mod I reporting metrics were available reflecting performance of any technologies post-ADMS launch. Further, we note that additional benefit categories lack operational data; for example, per Set 3 DR 7 a portion of the service outage management capability of AMI is awaiting integration into the ADMS. (Footnote 13.)
- The Grid Mod I cost-benefit analysis does not meet the level of transparency which would be expected per the Commission's grid modernization proceeding conclusions, or, more broadly, a level which would allow for audit conclusions to be reached. (Summary, paragraph 11.)

The chart on pages 49 and 50 in the "Benefits Analysis" section is a vivid visual display of FirstEnergy's failure to act prudently with customer money.

Comment 2: The Report failed to investigate external factors that are clearly germane and necessary for a proper review/audit of the Grid Mod 1. FirstEnergy admits that it bribed the PUCO chairman for favorable treatment at the PUCO. It did so because the PUCO chairman could influence and direct the treatment of FirstEnergy to include its Grid Mod 1 activities. Because the PUCO, through its chairman, was directly involved, the auditor chosen should be

fully independent from the PUCO, experienced in forensic and fraudulent practices, and be from a large well-known firm.

At attachment A is a recent news story that outlines FirstEnergy's admitted bribery of the PUCO Chairman. (FirstEnergy's plea agreement and the other uncontestable documents show the same.). You will note that the PUCO chairman came on board just as the Grid Mod 1 began. The selected auditor should be asked to determine two additional important questions: (1) why the quarterly reports submitted to the staff and PUCO oversight during Grid Mod 1 did not identify any of the shortcomings occurring during the tainted chairmanship and the entire period, and (2) why the PUCO itself did not initiate an independent audit after the corruption of the chairman became known?

Comment 3: The report failed to conduct a cost-benefit analysis (CBA) as set out in its scope of work. The CBA could and should have been done. Daymark's excuse for not doing so is that FirstEnergy is just now beginning some programs that were to be in place or that FirstEnergy failed to provide data etc. Any audit or CBA is a snapshot in time. Customers have a right to know the monetary shortfall to date so that these sums can be collected back from FirstEnergy.

Comment 4: The report is deficient in identifying overcharges, charges for tasks not completed, other shoddy work, and amounts of expected customer benefits not received, etc. These amounts should be credited back to customers.

Comment 5: The Daymark Report's use of term "mismatch" where FirstEnergy's failed to achieve the customer benefit ("operational savings and non-operational benefits") metrics is improper and misleading. A failure or shortfall is not a "mismatch." It is a monetary deficit that can and must be calculated. Daymark at several places offers suggestions to fix the

“mismatches” in a proposed future Grid Mod Phase 2. This would not hold FirstEnergy accountable for its past and ongoing shortfalls. This flips both construction and utility law on its head.

Grid Mod 1 was a \$650 million design-build construction project with a specified output. In construction practice, if a First Phase Audit finds the construction and output (system operation) do not meet the specifications then: (1) this is not a “mismatch” but it is a failure to meet terms and conditions, (2) it is the responsibility of the contractor to bring the project up to specification, and (3) the program is halted until the contractor “cures the problem.”

Here, these principles, not Daymark’s fanciful “mismatch” theory, apply to FirstEnergy. If FirstEnergy cannot cure the problem at its expense, then it pays damages or in utility jargon it refunds the money to customers and the remaining phases are cancelled. It makes no sense to build more phases unless the first phase is fully constructed and proved to work properly.

Comment 6: The Daymark Report suggests at page 51 and elsewhere that the Commission should adopt the now demonstrably false data in the original projected savings for years 4, 5, and 6 to justify moving ahead with Phase 2. The Commission should reject this approach. The projected savings in years 4, 5, and 6 are not independent variables, but instead depend upon the proper implementation of all the earlier specifications being properly completed. The Report elsewhere repeatedly makes clear that FirstEnergy did not properly perform (complete) the project or achieve the year 1, 2 and 3 operational and savings benefits. Thus, there will be savings shortfalls in years 4, 5, and 6 as well.

Comment 7: Both Daymark Report's unsound proposal to use the year 4, 5, and 6 data and its fanciful "mismatch" rhetoric cannot hide that customers did not get quality work or the product that they paid for. The Daymark approach must be rejected.

The NOAC communities (and the State of Ohio) are routinely involved in major construction projects that require a design-build with a specified output requirement; for example, a sewage plant that is to treat a given volume of wastewater, to a treatment standard, and at a certain cost. In any public works project, the contractor is accountable. The Daymark approach would excuse the contractor from full performance and is not used.

This, in turn, raises the issue of why would the staff overseeing the audit not require standard construction review/audit processes?

Comment 8: FirstEnergy's current Grid Mod 2 Application should be set aside and folded into its ESP 5 application and not considered until the independent audit discussed above is completed. The Daymark Report shows that FirstEnergy could not demonstrate that it met the objectives of Grid Mod 1. The PUCO allowed this to continue and failed to detect or provide any meaningful regulatory oversight. This shows that the rider approach just does not work with FirstEnergy.

Respectfully submitted,

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ATTACHMENT A:

Money paid, favors done. Messages detail relationship between Ohio regulator and energy executives

Documents filed in class-action against FirstEnergy

BY: [MARTY SCHLADEN](#) - AUGUST 8, 2023 5:00 AM

FBI agents remove boxes of materials from PUCO Chairman Sam Randazzo's condo in Columbus Nov. 17, 2020. Photo courtesy of Daniel Konik/Statehouse News Bureau. (*PHOTO OMITTED*)

In early 2019, news of financial ties between Akron-based FirstEnergy and the man incoming-Gov. Mike DeWine had named to lead the Public Utilities Commission of Ohio began to spread. And as it did, FirstEnergy's top executives feared they wouldn't have a regulator they could control, according to documents filed in federal court late last week.

"Great. Now we have none on the list" of nominees, then-CEO Chuck Jones texted Vice President Michael Dowling. Jones later added, ruefully, "Always need a backup plan."

As it happened, the nominee, Sam Randazzo, ended up being appointed to the commission after being paid \$4.3 million by FirstEnergy. He proceeded to help draft a law providing the utility with a \$1.3 billion bailout. The company spent another \$60 million to pass and then to protect it from a citizen-initiated repeal in what law-enforcement officials have called one of the biggest bribery and money-laundering scandals in state history.

Randazzo, Jones and Dowling haven't been charged in the scandal, but after a jury trial that convicted two others, two guilty pleas, and a suicide, the three men could be the next targets as federal authorities continue their probe.

If authentic, the communications filed on Friday indicate that the three met in Randazzo's Columbus condo in December 2018. And they appear to show that the FirstEnergy executives agreed to pay Randazzo a large sum in exchange for favors when Randazzo became the state's chief regulator.

Another communication 23 months later — just after the FBI searched the condo in November 2020 — shows Randazzo providing a friend “the number for my home which the FBI does not have.”

Demanding records

Lawyers for Randazzo, Jones and Dowling didn't immediately respond to requests for comment Monday, but attorneys for the former executives have said in separate court filings that they believe the feds are investigating their clients.

The documents filed in federal court on Friday are part of a huge class-action suit against FirstEnergy, Jones, Dowling and a number of other defendants.

In a deferred prosecution agreement, FirstEnergy in 2021 agreed to pay \$230 million and admitted wrongdoing, including by bribing Randazzo. But the class-action plaintiffs — large pension and investment funds — are arguing that the company violated securities law by not disclosing its corrupt conduct. And, they argue, the company lost much of its value when that conduct came to light, leaving investors holding the bag.

Randazzo has denied wrongdoing and he isn't a defendant in the case, but the class-action plaintiffs want him to produce all communications relating to how he spent the \$4.3 million he got from FirstEnergy just as he was poised to become its most powerful regulator.

The plaintiffs have been accusing Randazzo since April of [foot-dragging](#). They obtained the messages they filed Friday from a third party and are pointing to them as examples of Randazzo's lack of cooperation.

Early arrangements

The earliest of the messages was on Dec. 18, 2018, and it appears that the three men had recently met in the residence that the FBI later searched.

“Got it, Sam,” Dowling, then the FirstEnergy vice president, texted Randazzo.

“Good seeing you as well. Thanks for the hospitality. Cool condo.”

The “got it” was in response to a column of numbers Randazzo sent that appear to indicate that he was expecting payments from FirstEnergy through 2024:

- 2019 — 1,633,333
- 2020 — 600,000
- 2021 — 600,000
- 2022 — 600,000
- 2023 — 600,000
- 2024 — 300,000

A seventh entry said “Total 4,333,333” — an amount equal to what FirstEnergy said was a bribe.

The following day, Jones, the CEO, told Randazzo that he wouldn’t have to wait that long for the money, according to the filings. Jones also made it clear that he expected access to Randazzo.

“We’re going to get this handled this year, paid in full, no discount,” the message says. “Don’t forget about us or Hurricane Chuck may show up on your doorstep! Of course, no guarantee he won’t show up sometime anyway.”

Randazzo’s response seemed to be meant to reassure — and he linked the money to favors.

“Made me laugh — you guys are welcome anytime and anywhere I can open the door,” he said. “Let me know how you want me to structure the invoices. Thanks.”
Connections

But on Jan. 30, 2019, problems popped up with Randazzo’s nomination.

FirstEnergy’s nuclear-owning subsidiary, FirstEnergy Solutions, was going through bankruptcy and it had listed the Sustainability Funding Alliance of Ohio on one of its disclosures. Randazzo controlled the group and FirstEnergy had paid him millions through it in the past. Now the press was on to the matter.

“Chuck — Sam Randazzo is going to pull out of the PUCO process ASAP and it’s related to a disclosure on a (FirstEnergy Solutions) bankruptcy filing,” Dowling texted Jones, according to the documents filed Friday. “Reporters called (FirstEnergy) today inquiring about the relationship between (FirstEnergy Solutions) and a group called the Sustainability Funding Alliance of Ohio. You can guess the rest.”

That’s when Jones lamented not having a “backup plan” in the event that Randazzo was not seated on the utility commission. Dowling agreed.

“This is awful,” he wrote. “The FirstEnergy Solutions bankruptcy filing names that group and Sam names the same group on a financial disclosure statement. Unreal. I don’t know why it was listed in the (FirstEnergy Solutions) bankruptcy filing. The payments we made year-end ’18 came from (FirstEnergy) Corp. Services.”

Dowling was ready to throw Randazzo under the bus if the connection proved to be an embarrassment to the incoming DeWine administration.

“They’re going to be mad at Sam (and hopefully not us) for not disclosing the financial relationship,” Dowling wrote. “That’s Sam’s responsibility.”

A day later, however, the financial connection between FirstEnergy and Randazzo apparently wasn’t sufficiently embarrassing and he was picked to head up the PUCO.

“A bullet grazed the temple,” Dowling told Jones, according to one of the texts filed last week.

“Forced DeWine/Husted to perform battlefield triage,” Jones responded, referring to Lt. Gov. Jon Husted. “It’s a rough game.”

A still rougher game

In a trial held in Cincinnati from late January to mid-March, prosecutors put on witnesses and displayed communications describing Randazzo’s 2019 role in [drafting House Bill 6, the bailout bill](#). Not only did it provide \$1 billion to prop up two failing nuclear plants FirstEnergy was spinning off, it charged ratepayers [about \\$100 million a year](#) to insulate the company from an economic downturn. For FirstEnergy, it was easy money, in other words.

In June, U.S. District Judge Timothy Black sentenced [former Ohio House Speaker Larry Householder, R-Glenford](#), to 20 years in prison for orchestrating the racketeering scandal. Former state [GOP Chairman Matt Borges](#) got five years for his role.

By November of 2019, HB 6 was on the books after FirstEnergy and a subsidiary plowed \$36 million into a brutal, dishonest effort to turn back a citizen-initiated repeal. But the FirstEnergy executives weren't done with Randazzo.

On Nov. 10, 2019, Jones texted a coal executive that another cloud loomed for FirstEnergy.

“And the (FirstEnergy) rescue project is not over,” Jones said, according to documents filed as part of the class-action suit. “At (Edison Electric Institute) financial conference. Stock is gonna get hit with Ohio 2024. Need Sam to get rid of the ‘Ohio 2024’ hole.”

That was an apparent reference to a requirement that FirstEnergy file a “rate case” with the PUCO in 2024. In such a proceeding, regulators assess a utility's operations and make a judgment about whether its rates and revenues are reasonable.

FirstEnergy was apparently afraid they wouldn't be. On Nov. 21, 2019, just 11 days after Jones expressed his concerns, the PUCO under Randazzo's leadership issued an order saying it was [“no longer necessary or appropriate”](#) to require FirstEnergy to file a rate case.

The next day, Jones wanted to express his appreciation to Randazzo. He did so by sending the erstwhile regulator a list of prices for six energy stocks that day.

FirstEnergy stocks were up 1.5%. The next highest was Avangrid, which was up 0.86%.

“Thank you!!” Jones wrote.

Randazzo replied, “Ha — as you know, what comes up may come down... Thanks for the note. Spoke to Mike (Dowling) last night.”

Then Jones said, “My Mom taught me to say Thank you.”
Flying high

By the start of 2020, things seemed to be going well for those who orchestrated the bailout.

FirstEnergy Solutions would emerge from bankruptcy in February as a separate company, Energy Harbor. The class-action plaintiffs argue that one of FirstEnergy's major goals in the scheme was to prop up the nuclear plants, get them off their books and shed the liability of having to pay for a [decades-long process to close and clean up after them](#).

At the same time, FirstEnergy was funneling millions more dark-money dollars into an effort to get the state's legislature to put a constitutional amendment on the ballot. It would change the state's term-limits [so Householder could stay speaker for another 16 years](#) — and presumably continue to do the utilities' bidding.

But then in July 2020, it all crashed down.

On July 21, the FBI [arrested Householder, Borges and other conspirators](#). By the next day, FirstEnergy stock had lost 34% of its value, the class-action plaintiffs contend.

FirstEnergy fired Jones and Dowling the following October. And then in November, 2020, Randazzo was forced to resign from the PUCO after the FBI searched his condo.

“Pretty stressful few days which started Monday at 6:00 when 10-12 FBI agents with their guns drawn announced their arrival at our home,” Randazzo emailed a friend on Nov. 21, according to the documents filed by the class-action plaintiffs.

“But, Carol and I are handling it and doing better each day. Neighbors, friends (like you) family, PUCO staff and people I have worked for over the years have been great. Roger Sugarman (his attorney) is my new hero. So onward!”

Then Randazzo encouraged the friend to call him on the number he believed that the FBI didn't have.

**This foregoing document was electronically filed with the Public Utilities
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8/11/2023 4:12:48 PM

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**Case No(s). 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, 18-1656-EL-
ATA**

Summary: Comments Initial Comments on the Daymark Audit Report of FirstEnergy Grid Mod 1 electronically filed by Mr. Thomas R. Hays on behalf of NOAC and Lucas County Board of Commissioners and Lake Township Board of Trustees and City of Toledo and City of Sylvania and Village of Ottawa Hills and City of Perrysburg and City of Northwood and City of Maumee and The Village of Holland and City of Oregon and Perrysburg Township and City of Rossford and Village of Walbridge.